



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

Minutes for the July 21, 2004 meeting of the  
Commission on Governmental Ethics and Election Practices  
held in the Public Utilities/Ethics Commission Conference Room,  
242 State Street, Augusta.

Present: Chair James O. Donnelly; Hon. Terrence J. MacTaggart; Hon. Andrew  
Ketterer. Commission staff: Director Jonathan Wayne; Counsel Phyllis  
Gardiner, Esq.

Chair Donnelly called the meeting to order at 10:10 a.m. The Commission considered  
the items on the published agenda as follows:

Agenda Item #1 - Ratification of Minutes

Mr. Ketterer moved, Dr. MacTaggart seconded, and the members voted unanimously to  
accept the minutes of the June 9, 2004 meeting as submitted.

Agenda Item #2 - Contributions by Lobbyists and Lobbyist Associates

At the request of the candidates involved, Mr. Ketterer moved, Dr. MacTaggart  
seconded, and the members voted unanimously to table the agenda item to the next  
Commission meeting.

Agenda Item #3 - Request for Guidance from Trade Associations on Independent  
Expenditures

A number of trade associations had submitted questions asking for guidance on a 2003  
change in the law regarding independent expenditures. At the request of the Chair, the  
Director briefed the Commission members on the change in the law, and presented a draft  
memo intended to respond to the questions and to provide guidance to the public on how  
the Commission would interpret the change in the law.

David Clough, President of the Enterprise Policy Group, stated on behalf of the trade  
associations that the Commission staff's draft memo had been circulated to several  
associations, and they had not had an opportunity to respond. He said that the  
interpretation of the law raised important issues regarding communications by employers  
to employees and what constitutes dissemination of an election communication.

Mr. Ketterer suggested that one way to respond to this matter may be to look at each communication individually on a case-by-case basis. The Chair asked the Commission staff to research whether an employer's communications to its employees would be covered by the same exception to the definition of expenditure that applies to a membership organization's communications to its members.

Dr. MacTaggart suggested that the Commission staff refer to examples from other states that may provide guidance in how to handle employers' communications to employees, and suggested that the Commission revisit this topic at its next meeting.

Mr. Donnelly moved, Mr. Ketterer seconded, and the Commission members voted unanimously to table this item until its next meeting.

#### Agenda Item #4 - Filing Deadline for Independent Expenditures in Excess of \$250

The Commission Director explained that in the previous Session, the Legislature had amended a number of statutory deadlines for political action committees and party committees to report large contributions and expenditures close to an election. The deadlines had been amended from within 48 hours of the contribution or expenditure to within 24 hours. In order to be consistent with the statutory changes, Mr. Wayne asked whether the Commission members wished to consider amending the Commission Rules so that independent expenditures greater than \$250 would be required to be reported within 24 hours.

Mr. Ketterer asked what would happen if the statutory deadlines were different than the deadline in the Commission Rule, and whether the 48-hour reporting permitted by the Commission Rule would be in violation of the statute. The Director stated that the Commission Rule was not necessarily in violation of the statute, but that the Commission Rule would be out of step with the statutory requirements.

Arn Pearson of the Maine Citizen Leadership Fund commented that the current rule likely would create confusion, and said that it would be advantageous if the Rule was changed by September.

Dr. MacTaggart moved, Mr. Ketterer seconded, and the members voted unanimously to adopt for public comment the proposed rule amendment that would require the reporting of independent expenditures greater than \$250 within 24 hours of the expenditure.

#### Agenda Item #5 - Section 527 Organizations

Mr. Ketterer moved, Mr. Donnelly seconded, and the members voted unanimously to table this agenda item until the next Commission meeting.

#### Agenda Item #6 - Meeting Dates

The Commission members requested that the Director confirm proposed meeting dates by e-mail.

Agenda Item #7 - Maine Clean Election Act Candidates in Recounts

The Commission Director informed the members that he had received a number of telephone calls from Maine Clean Election Act candidates regarding recounts of the June 8 primary election. Their concern was that they had spent all or most of their Clean Election funds and did not have any money to pay for legal fees. As Maine Clean Election Act (MCEA) candidates, they were unable to collect private funds to pay attorneys.

Les Fossel, a Maine Clean Election Act candidate, stated to the Commission that he was involved in his second recount, and that in his current recount the results were tied so the matter must go to the court system to be resolved. Mr. Fossel said that he understood that if he pays an attorney to draft a legal brief for the court, he may be in violation of the MCEA rules.

Dan Billings, who had represented Mr. Fossel's opponent, Dana Dow, in the recount stated that recount costs should not be considered election-related expenditures because the recount process is not intended to influence a nomination or election. He stated that in the past parties or political action committees have paid for candidates' legal fees for recounts, which may have exceeded the contribution limit. Mr. Billings noted that recounts in federal elections are not considered part of the election campaign, and are considered a judicial process. Mr. Billings urged the Commission to deal with the issue before the general election.

Kim Pettengil stated that she had been involved in recounts for 30 years as a member of the Republican Party. She stated her belief that the issue of recounts is a totally separate issue from the process of campaigning that is funded by the MCEA. She suggested that a separate campaign finance report should be required for recount expenditures, and that candidates should be allowed to raise no more than is necessary to participate in the recounts.

Mr. Ketterer stated that it is helpful to have insight from the public who have an understanding of this issue. He stated that he sees the recount as separate from the election process, because the process of counting and recounting votes is different than campaigning to influence voters. The Commission members agreed they would like to revisit this topic at the next meeting. Mr. Ketterer moved, Dr. MacTaggart seconded, and the Commission members voted unanimously to table this agenda item until the next meeting.

There being no further business, the Commission adjourned.

Dated: September \_\_\_, 2004

Respectfully submitted,

Jonathan Wayne  
Executive Director